

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 13, 2003 at 8 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 54, 1/13/2003; HB 61, 1/13/2003;
HB 70, 1/13/2003
Executive Action: HB 61; HB 70; HB 48; HB 84; HB 29

HEARING ON HB 70

Sponsor: REP. JOHN PARKER, HD 45

Opening Statement by Sponsor:

REP. PARKER opened on HB 70, stating this bill clarifies the procedure for dismissing a defendant's appeal of a conviction to the district court. He stated the purpose of the bill is to eliminate some of the inefficiencies caused by people dragging their feet and those who fail to show up for their hearing.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 17}

Proponents' Testimony:

John Connor, Assistant Attorney General, Department of Justice, supported HB 70, however, he offered an amendment which would allow the Court's discretion to proceed where the person had good cause for not showing up for their hearing.

{Tape: 1; Side: A; Approx. Time Counter: 18 - 60}

Jim Smith, Montana County Attorney's Association supported HB 70.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK asked Mr. Connor about what happens if the defendant does not show up. Mr. Connor stated the law requires the trial to proceed or be dismissed.

REP. NOENNIG asked Mr. Connor when would be an appropriate time to dismiss a case. Mr. Connor stated that the Court has discretion on whether or not to dismiss the case.

REP. GALLUS asked the chairman to allow Leo Gallagher, County Attorney, Lewis and Clark County to address the Committee. Mr. Gallagher stated a defendant can inadvertently waive a jury trial. He explained that at the felony level, a defendant must sign a written waiver; with misdemeanors, a defendant cannot waive a jury trial without consent. Mr. Gallagher suggested an amendment to state that the defendant's failure to appear at the

pretrial conference or otherwise comply with the court's directive shall constitute a waiver of the right to a trial.

{Tape: 1; Side: A; Approx. Time Counter: 122 - 141}

REP. LANGE asked Mr. Connor about the time frame. **Mr. Connor** stated he intentionally did not put in a time frame feeling it would be best to let the defendant and judge work it out.

Closing by Sponsor:

REP. PARKER closed on HB 70, stating that he would be open to working with Mr. Connor to amend the language.

HEARING ON HB 54

Sponsor: **REP. BRAD NEWMAN, HD 38, Butte**

Opening Statement by Sponsor:

REP. NEWMAN opened on HB 54 stating this bill would revise the criminal laws related to stalking, child pornography, defamation, and privacy in communication. He explained it would involve the use of computers, video recorders, fax machines, and other electronic devices.

Proponents' Testimony:

Beth Sachary, Montana Coalition Against Domestic and Sexual Violence, supported HB 54. She stated this bill would provide an important tool for the prosecution. She read from a letter from Deputy County Attorney, Suzy Boylan-Moore, which stated, "To leave the statutes as they are would ignore the important technological advances that have enabled criminal offenders to find new and more frightening ways to commit their crimes."

EXHIBIT(juh06a01)

EXHIBIT(juh06a02)

{Tape: 1; Side: A; Approx. Time Counter: 218 - 248}

Allie Bovingdon, Assistant Attorney General (AAG), Department of Justice, supported HB 54, stating this bill would bring criminal offenses, with the element of communication or transmittal of information, into alignment with the methods of communication that exist today.

Jim Smith, Montana Sheriff's and Peace Officers and Montana County Attorney's Association, support HB 54. He described an example of a man who installed a device on a woman's car in order to follow her. He stated this bill would assist in the prosecution of stalking cases.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked Ms. Bovingdon, about forwarding an email he received but did not solicit. **Ms. Bovingdon** stated the jury would determine motivation. **REP. HARRIS** questioned whether this bill was overly broad. **Ms. Bovingdon** responded that email communications could be prosecuted. **REP. CLARK** asked **REP. NEWMAN** a similar question about forwarding an email. **REP. NEWMAN** stated that it is a technical possibility to be prosecuted for forwarding illegal emails, solicited or not, under this bill.

REP. STOKER asked Jim Smith if he would add Global Positioning System (GPS). **Mr. Smith** replied that a GPS would fall under the bill and need not be included specifically.

Closing by Sponsor:

REP. NEWMAN closed on HB 54, stating it does not change the elements of the four enumerated offenses or diminish the defendant's right to due process. He stressed that this bill sets forth some venue concerns about where the case can be prosecuted. He stated that the prosecution needs to keep up with those who utilize technology to commit offenses.

{Tape: 1; Side: A; Approx. Time Counter: 407 - 463}

HEARING ON HB 61

Sponsor: **REP. JEFF LASLOVICH, HD 57, Anaconda**

Opening Statement by Sponsor:

REP. LASZLOVICH opened on HB 61, stating this bill provides that a person under 21 may not be arrested or charged with possession or consumption of alcohol solely because the person was at a place where others were using or possessing it. He believes this bill would make criminals out of innocent individuals who are not

drinking nor who intend to drink. He stressed that teenagers who act as designated drivers actually save lives by ensuring their friends who are drinking do not drive. He stressed that teenagers have been drinking since the beginning of time and will continue to do so no matter what the law mandates.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 51}

Proponents' Testimony: None

Opponents' Testimony:

Dan Haffey, Prevention Specialist, Butte-Silverbow, opposed HB 57. **Mr. Haffey** stated he is an educator, a licensed addiction counselor, and prevention specialist. Although he admired the bill's intent, he believes the youth are getting mixed messages. He currently teaches a minor in possession (MIP) class and typically has 20-30 individuals in class a month. He stated offenders and parents must attend a Saturday morning class. He stated young people who go to parties with good intentions not to drink very often end up drinking.

{Tape: 1; Side: B; Approx. Time Counter: 51 - 200}

Informational Testimony:

Mike Barrett, Helena, spoke abstractly about public education and the effects of alcohol.

EXHIBIT (juh06a03)

Questions from Committee Members and Responses:

REP. LASZLOFFY asked **REP. LASZLOVICH** about enabling kids by passing this bill. **REP. LASZLOVICH** stated that underage drinking is inevitable no matter what the law states. He stated those who are not drinking at parties provide leadership to those who are drinking. **REP. LASZLOFFY** questioned how this bill, if passed, would be implemented. **REP. LASZLOVICH** stated he does not know but the prosecutors would be better able to answer that question.

{Tape: 1; Side: B; Approx. Time Counter: 334 - 395}

REP. NEWMAN stated he does not want to give a "get out of jail free" card. He asked **REP. LASZLOVICH** a hypothetical question; a youth, although not drinking, has a house party where other youths are drinking. Would that youth be exonerated from an MIP citation under this bill? **REP. LASZLOVICH** stated they could, and he hoped they would, be issued a citation. **REP. NEWMAN** posed

another scenario where a youth is driving others who have been consuming alcohol; would that driver be covered by this bill and not be subject to an MIP. **REP. LASZLOVICH** clarified that if there was no alcohol in the car, the driver would not get an MIP under HB 61.

REP. NOENNIG stressed to Mr. Haffey the difficulty of enforcing the current law, constructive possession, and the zone of control. **Mr. Haffey** replied explaining the law of constructive possession and that it is being enforced in many communities.

REP. LANGE asked Mr. Haffey whether this bill would enable teenagers and send the wrong message to minors. **Mr. Haffey** agreed it would.

{Tape: 1; Side: B; Approx. Time Counter: 396 - 508}

Closing by Sponsor:

REP. LASZLOVICH closed on HB 61. He stressed that teenagers who choose not to drink and those who choose to be designated drivers should not be punished. He explained that some police officers are not enforcing the present law of charging youths not drinking, and applauded their efforts. He stressed this bill is necessary to avoid making criminals out of innocent youths.

{Tape: 2; Side: A; Approx. Time Counter: 116 - 159}

EXECUTIVE ACTION ON HB 61

Discussion:

Committee discussed HB 61. **REPS. HARRIS AND RICE** commented this is a good bill and would improve the existing law encouraging youths under 21 to be responsible.

Motion: **REP. CLARK** moved **HB 61 DO PASS.**

The Committee discussed that although they applaud the intent of the bill, many were concerned that passing HB 61 would enable youths to break the law or to attend illegal activities. **REP. NOENNIG** stated the present law is terrible and a youth should not be convicted solely for mere presence at activities where others are drinking. **REP. NEWMAN** explained actual as opposed to constructive possession; that this bill sends a wrong message to kids, and he opposes HB 61. **REPS. RAZOR, MALCOLM, RICE,** and **HARRIS** stated this is a good bill and they support it reasoning it would encourage kids to be responsible and send a message that

it is okay not to drink. **REPS. LANGE** and **THOMAS** opposed this bill. **REP. CLARK** acknowledged the Sponsor's good intention and that he appreciated it. However, he stated he had a problem with creating an environment which would enable kids to attend illegal functions. **CHAIRMAN SHOCKLEY** stated HB 61 would not interfere with the accountability statute in 45-2-302. He stated he has always had a problem with the federal government letting a kid go to war and get shot before they are 21 yet not allow them to drink.

Vote: Motion DO PASS HB 61 failed 8-10 with **REPS. LASZLOFFY, RICE, HARRIS, FACEY, GALLUS, RASER, MALCOLM, and SHOCKLEY** voting yes by roll call.

Motion/Vote: **REP. GALLUS** moved to TABLE HB 61. Motion carried unanimously.

EXECUTIVE ACTION ON HB 70

Motion: **REP. PARKER** moved DO PASS HB 70.

Motion: **REP. PARKER** moved to AMEND HB 70.

EXHIBIT(juh06a04)

Discussion:

Committee members discussed **REP. PARKER's** proposed amendments to HB 70 and agreed bill should be amended.

Vote: Motion to AMEND HB 70 carried unanimously.

Vote: Motion DO PASS HB 70 carried unanimously.

EXECUTIVE ACTION ON HB 48

Motion: **REP. NEWMAN** moved DO PASS HB 48.

Motion: **REP. NEWMAN** moved to AMEND HB 48.

Discussion:

Committee discussed the Anders brief and the need to flesh out the language regarding why the issues lack merit. **REP. NEWMAN**

discussed appellate defender, Chad Wright's, concern of not wanting to be in the precarious position of opposing his client's position. Both **CHAIRMAN SHOCKLEY** and **REP. NEWMAN** discussed amending the bill so as not to require appellate counsel to discuss why the issues lack merit but rather just stating the issues that may support an appeal. **REP. NOENNIG** agreed with **REP. NEWMAN** that the intent of the bill is good but the procedure needs to be flushed out and that the proposed Amendment would accomplish that.

Vote: Motion to AMEND HB 48 carried unanimously.

Vote: Motion DO PASS HB 48 carried unanimously.

EXECUTIVE ACTION ON HB 84

Motion: **REP. NEWMAN** moved DO PASS HB 84.

Motion: **REP. NEWMAN** moved to AMEND HB 84.

Discussion:

John McMaster handed out a written amendment to HB 84 with the proposed language. **REP. NEWMAN** stated the amendment to HB 84 would incorporate language making mitigated deliberate homicide a lesser included offense of deliberate as defined in 45-5-102(1)(a) but would not make it a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b). **REP. HARRIS** commented that neither the prosecution or the defense has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation. **REP. CLARK** opined that this bill moves control away from the jury to decide whether mitigation existed and places the issue in the judge's discretion. **REP. NEWMAN** stated the purpose of the bill is to clean up the mess of requiring the defendant to assert an affirmative defense. Also, to clean up the statute without taking the jury's prerogative to decide whether mitigation exists. **REP. HARRIS** asked whether a judge must instruct on mitigated deliberate homicide if any evidence on mitigation is introduced at trial. **REP. NEWMAN** responded not necessarily. He stated the court can offer instructions. **REP. NEWMAN** explained that if neither the defendant, the prosecution, or the court raises mitigation at trial, it will not be subject to appeal. **REP. CLARK** asked if mitigation is left out of the trial could it still be raised at sentencing. **REP. NEWMAN** replied that is correct. **REP. GUTSCHE** asked **REP. NEWMAN** whether there is a reason to separate mitigated from deliberate as opposed to having it in

the statute as a lesser included offense. **REP. NEWMAN** replied that the lesser included is a separate offense. He used burglary/trespass as an example in which the jury could not find the defendant guilty of burglary but could on trespass.

Motion/Vote: Motion to AMEND HB 84 carried unanimously.

Vote: Motion DO PASS HB 84 AS AMENDED carried unanimously.

EXECUTIVE ACTION ON HB 29

Motion: **REP. GALLUS** moved DO PASS HB 29.

Motion: **CHAIRMAN SHOCKLEY** moved to AMEND HB 29.

Discussion:

CHAIRMAN SHOCKLEY explained the amendments which John McMaster prepared. **CHAIRMAN SHOCKLEY** stated the third paragraph removes the prosecution's veto power and the fourth paragraph would give the prosecution a say before the screening committee on the issue of whether the defendant should be a candidate for boot camp.

REP. NEWMAN agreed with amendments 1,3,and 4 but not 2. Committee discussed many revisions of the language leaving it up to John McMaster to work on the language of the bill.

Motion: **CHAIRMAN SHOCKLEY** moved to WITHDRAW AMENDMENT 2.

Motion/Vote: **REP. NOENNIG** moved AMENDMENTS 1,3, AND 4. Motion to AMEND HB 29 carried unanimously.

Motion/Vote: **REP. NOENNIG** moved DO PASS HB 29 AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh06aad)